

**THE BILL BLACKWOOD
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Implementing a Family Violence Policy

A Policy Research Project
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ABSTRACT

The issue of family violence and specifically the manner in which law enforcement responds is one of significant importance. Examining the need for written directives for law enforcement personnel handling family violence calls is the primary purpose of this project.

Law enforcement agencies govern their agencies by issuing rules and regulations, special orders, and/or codes of conduct. To ensure structure and adherence to rules, most agencies implement those rules and regulations in written form for ease of compliance.

Texas state law and specific case law, and legislative mandates were researched to ensure compliance when adopting a comprehensive family violence policy. A review of other law enforcement agencies current family violence policies was conducted.

The research concluded that a written family violence policy is essential for compliance with all state regulations as well as for complete understanding of procedures to every law enforcement officer.

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Introduction

Family violence is a local, state, and national issue that concerns all law enforcement agencies. Nationally, the response to family violence accounts for approximately 30 percent of all law enforcement calls for service. In addition, law enforcement officers spend, on average, approximately one (1) hour per call (National Women's Abuse Center 1992). Thus, the financial cost to taxpayers alone is staggering. The National Women's Abuse Center states that a woman is battered every twelve (12) seconds in the United States. The 1994 FBI Uniform Crime Report reports that a murder occurs every twenty three (23) minutes, a rape every five (5) minutes and a robbery every fifty one (51) seconds (Uniform Crime Report 1994). With these overwhelming statistics, law enforcement agencies must take a proactive approach to family violence and develop policies and procedures to combat the problem at its root cause.

The focus of this research paper is on the importance of Written policy versus unwritten verbal orders governing the Enforcement of family violence statutes. The victim's perspectives, officer training, documentation, victim's rights, and criminal and civil liability will be researched in relation to family violence. Texas state law and specific case law will provide parameters affecting the law enforcement response and the basis of a written policy. Family violence policies from various Law enforcement agencies will also be used for comparative purposes. Other intended sources include journals, books,

national, state and local statistics, and historical information.

The completed research project will be submitted to the Converse Chief of Police, City Manager, Mayor and City Council for the implementation into the Converse Police Department Code of Conduct procedures manual.

The intended outcomes of this project are to gain education for law enforcement training and adopt a comprehensive written family violence policy for the Converse Police Department.

Historical, Legal or Theoretical Context

In recorded history, wife abuse was an acceptable behavior as far back as Roman times. Under Roman law, a man had the right to determine life or death over all persons in his family. In English Common Law, a husband had the legal right to use force against his wife to ensure her obedience. Men were permitted to discipline their wives with a rod or stick as long as it was no wider than the width of his thumb; hence, the expression "Rule of Thumb". Then finally in 1881, Texas Penal Code stated that an assault by an adult male on an adult female became an aggravated assault

According to TCLEOSE (1992), the Texas Legislature from 1979 to 1991 brought about significant changes in Texas family laws, which include:

- 1) the creation of state funding for battered women's shelters;
- 2) creation of the family violence Protective Order - Peace officers are now mandated to arrest without warrant when a Protective order is violated;
- 3) authorization for peace officers arrest of batterers when probable cause exists;
- 4) clearer legal definitions of "family" and "family violence";

- 5) requiring peace officers to inform all victims of their legal rights by written notice, and the availability of shelters and other community resources;
- 6) requiring peace officers to make written reports on family violence offenses and to entitle them "family violence";
- 7) passage of the Crime Victims Compensation Act;
- 8) removal of the "spousal exemption" from sexual assault and aggravated sexual assault statutes;
- 9) requiring family violence training for peace officers and judges;
- 10) allowing extended detention of batterers up to twenty four (24) hours after they've posted bond (if probable cause exists that they'll immediately resume acts of family violence) ;
- 11) enhancement of penalties for successive family violence assaults;
- 12) enhancement of penalties for successive violations of a Protective order.

In February 1985, The Family Violence Prevention Act was submitted to the 69th Texas Legislature under Senate bill 869/870 and House bill 1625/1626. The bills successfully passed both the house and senate during the 69th Legislative session. The act amended the Texas Code of Criminal Procedure by adding Chapter Five which is entitled "Family Violence Prevention". Many of the provisions in the C.C.P., Chapter five are included in the above Texas laws.

One of the most significant changes brought about from the Family Violence Prevention Act was the inclusion of the "immunity" clause in law. The law was amended to allow for immunity from liability for peace officers making arrests within the provisions of the statute, providing that such arrests are made in good faith and without malice.

Civil liability issues related to family violence are of great Importance to law enforcement personnel, supervisors,

administrators, and managers.

Traditionally, governmental agencies and their agents have enjoyed what is termed "qualified immunity". Basically, this means that agencies and agents are exempt from civil litigation based on their actions, or the lack of, provided a violation of constitutional rights does not exist. The courts have upheld the idea that "government officials have no constitutional duty to protect members of the public from crime," although "such duty may arise by virtue of special relationship between those officials and a particular member of the public" (Fogarty 1994).

In the past it has been well-established that a municipality, acting in its governmental capacity for the protection of the general public, "cannot be cast in damages for a mere failure to furnish adequate protection to a particular individual to whom it has assumed no special duty". The key phrase here is "special duty".

Probably the most famous and widely publicized case to establish a "special duty" is that of *Thurman v. City of Torrington* (1984). This case appeared to reveal a prolonged period of gross indifference on the part of police with the City of Torrington. On numerous occasions, Tracy Thurman reported threats of violence and harassment on the part of her ex-husband. Even after she sought and received a protection order from the court, which must clearly establish a responsibility on the part of the police department to provide protection, and after reporting violations of this same court order, the Torrington police did not make any attempt to

secure the custody of Charles Thurman. Subsequently, eleven days after Tracy Thurman appeared at the Torrington Police Department to pursue a warrant request, Charles Thurman came to the residence of Tracy Thurman and brutally attacked her with a knife.

In this case, the court found that a "special duty" had been established requiring that the Torrington Police Department afford protection to Tracy Thurman and that Torrington Police Department was negligent in failing to do so. A landmark monetary judgement of 2.2 million dollars was granted to Tracy Thurman.

The Thurman case created an outcry by the public and the agencies insuring law enforcement agencies against civil liability. The insurance agencies stated that unless law enforcement training was changed, they would no longer insure law enforcement entities.

Texas state law requires family violence training of all law enforcement officers. The Texas Commission on Law Enforcement Officers Standards and Education (TCLEOSE 1992), under rule 211.100b, specifically mandates that each peace officer attend family violence intervention training every two (2) years. TCLEOSE has established an eight (8) hour family violence training course that places emphasis on spousal abuse. Additionally, TCLEOSE developed a ten (10) hour curriculum that includes family violence, child abuse, and sexual assault.

Many state laws have been established that dictates how peace officers respond to family violence calls. The Texas Code of Criminal Procedure, Art. 5.04, states that the primary duties of a peace officer who investigates a family violence allegation or who

responds to a disturbance call that may involve family violence are to protect any potential victim of family violence, enforce the law, and make lawful arrests of violators. The article further states that a peace officer shall advise any possible adult victim of all reasonable means to prevent further family violence, including giving written notice of a victim's legal rights and remedies and of the availability of shelter or other community services for family violence victims. Peace officers also shall make a written report and establish a departmental code for identifying and retrieving family violence reports.

The CCP additionally contains the provisions of Texas crime victims rights and Crime Victims Compensation Act. The Texas Family Code includes laws relating to Protective Orders and child abuse. The Texas Government Code, Section 411.042(b) (2) requires the Texas Department of Public Safety's Bureau of Identification and Records To "collect information concerning the number and nature of offenses known to have been committed in this state and the legal steps taken in connection with the offenses, and other information useful in the study of crime and the administration of justice, including a statistical breakdown of those offenses in which family violence was involved". Texas Penal Code provides criminal statutes for which individuals can be arrested for family violence offenses.

Review of Literature or Practice

Statistics compiled by the National Women's Abuse Center, Washington, D.C., are staggering and indicates a serious need for peace officers to take a proactive stance on family violence. The

statistics reveal a woman is battered every 12 seconds in the United States; three to four million women are battered every year by their husbands or boyfriends. Violence is reported to occur at least once in two-thirds of all marriages and not surprisingly, once a woman is victimized by domestic violence, she is at high risk for being victimized again. Wife-beating results in more injuries to women that require medical treatment than rape, auto accidents, and muggings combined. According to the United States Surgeon General (TCLEOSE 1992), battering is the number one cause of injury to women in the United States. Further statistics from the National Women's Abuse Center reports that thirty percent of murdered women are killed by their husbands or boyfriends. The financial cost is equally staggering. United States businesses lose \$3 - \$5 million annually in absenteeism-related costs and more than one million women seek medical treatment each year for injuries caused by battering, costing in excess of \$100 million dollars. It's estimated that thirty (30) percent of all police calls are family violence related, with the average officer time spent per call of just under an hour; thus, the financial cost to taxpayers is overwhelming.

The 1995, Crime and Justice in Texas bulletin revealed in 1993, 767 Texas law officers were assaulted responding to family violence calls. The total number of assaults on law enforcement officers during all types of police activity was 5,193; therefore, family violence assaults accounted for fifteen (15) percent of all assaults against law enforcement officer.

The Converse Police Department responded to approximately 264 family violence related calls in 1996. This averages to 22 such calls per month. With utilizing the statistics gathered by the National Women's Abuse Center, approximately twenty two (22) hours are spent, each month, by Converse Police Officers handling domestic related issues. As a result, a comprehensive family violence policy must be developed for the Converse Police Department to protect the victims, officers, and the city.

In reviewing studies of police response to family violence, one such study is considered a milestone in criminal justice studies: the Minneapolis Domestic Violence Experiment (Sherman and Berk 1984). This was the first scientifically controlled test of the effects of arrest for any crime. The purpose of the experiment was to find the best response for the police to misdemeanor cases of domestic violence. At the time of the experiment there were three viewpoints:

- 1) The traditional police approach of doing as little as possible, on the premise that offenders will not be punished by the courts even if they are arrested, and that the problems are basically not solvable.
- 2) The clinical psychologists' recommendations that police actively mediate or arbitrate disputes underlying the violence, restoring peace but not making any arrests.
- 3) The approach recommended by many women's groups and the Police Executive Research Forum (Loving, 1980) of treating the violence as a criminal offense subject to arrest.

In attempting to draw conclusions from the study, it may be premature to conclude that arrest is always the best way for police to handle domestic violence. However, the results of the study

indicated in both methods of measurement that the use of arrest produced the least amount of repeat violence.

The results of the Minneapolis Experiment (Sherman and Berk 1984) produced a rash of mandatory arrest laws enacted across the United States. It should be noted that attempts to replicate the Minneapolis program have not resulted in a reduction of family violence.

A survey of several Law Enforcement agencies family violence policies and procedures was conducted. Departmental policies from the Live Oak Police Department (1997), Selma Police Department (1997), Universal City Police Department (1990), and Schertz Police Department (1989) were gathered.

Upon reviewing the policies, all departmental directives cited Texas State law governing family violence. The Selma Police Department (1997) and the Live Oak Police Department policies both contain orders for peace officers to not officially participate in civil matters, although, officers are encouraged to refer individuals to the appropriate agencies. In all four (4) agencies, peace officers are encouraged to arrest violators when probable cause exists that an offense had been committed. Furthermore, officers are discouraged from dismissing or "dropping" charges on those cases involving family violence.

In comparing the Minneapolis Domestic Violence Experiment (Sherman and Berk 1984) with the current departmental policies of the four (4) agencies listed above, it is apparent that arrest of violators is the preferred means with which to deter further family

violence. The department policies do not dictate arrest as the only means for peace officers to dispose of family violence situations but it is strongly encouraged while still permitting officer limited discretion. The police agencies direct peace officers to take a multi-directional approach, combining prevention, intervention, mediation, criminal sanctions, and interagency cooperation to effectively combat family violence.

Discussion of Relevant Issues

When adopting a written family violence policy, the law enforcement manager must give priority to Texas state law and specific case law. Focal points must include those specific laws (Family Code 1995, Code of Criminal Procedure 1995 and Penal Code 1995) relating to specifically how a peace officer must respond to family violence calls. Peace officers shall distribute the written notice to the alleged victims which includes information on family violence prevention, family violence shelters and other resources available. Law enforcement must also complete a written report and code that report for ease of identifying and retrieval. Officers must also relay information on how and where the alleged victim can obtain a protective order.

Peace officer training must also receive significant attention. As mandated by Texas statute, the officer must receive adequate training in the family violence area. The training must be completed once every two (2) years utilizing an approved curriculum. For every training dollar spent there is a 30% return (Bourn 1996).

Specific case law (Thurman v. City of Torrington 1984) has identified a concern with "special duty" when peace officers handle family violence type crimes. The likelihood of civil liability suits for "failure to protect" or "equal protection under the law" is persuasive when determining proper action at a family violence call.

Managers can no longer assume a passive role in family Violence situations. Family violence calls equates to a large number of calls for service indicating an enormous need for clear rules and regulations. Although, the initial costs for adhering to state statutes and mandates are high, the overwhelming affect for non compliance can be financially devastating. The financial cost for just defending a civil suit can be enormous, not to mention the end result of loosing such as case merely for not complying with statutes and mandates. To protect the victims, peace officers and the governing agencies, a law enforcement agency must have a clear written family violence policy. Currently, Converse peace officers are adhering to unwritten orders, thus, implementation written policy will have no significant cost.

Conclusion/Recommendations

The purpose of the research is to provide significant parameters with which to complete a written family violence policy for the Converse Police Department.

Family violence contributes to the disintegration of the family unit, which aggravates such problems as school dropouts, substance abuse, and crime in general. The impact of family

violence goes beyond the effect of any single episode. Research has demonstrated the frightening degree to which family violence is passed on from one generation to the next. With written agency directives, the goal is to reduce the incident of family violence by utilizing multi-agency intervention technics and resources. The policy must also be created in order to reduce peace officer injury and death. Protecting the peace officers responding to family violence, must be a primary concern when completing the policy. The object of law enforcement intervention is to interrupt the cycle of violence and prevent further injury, even death in extreme cases (TCLEOSE 1992).

This project has examined the state law requirements and mandates which require agencies to issue particular data to victims, specific training, and the need for a written peace officer order.

In conclusion, it is imperative for each law enforcement Agency to have a comprehensive written policy with specific Directives for each officer responding to a family violence situation. With this written policy, the agency can assure that all specific state laws and mandates are followed.

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